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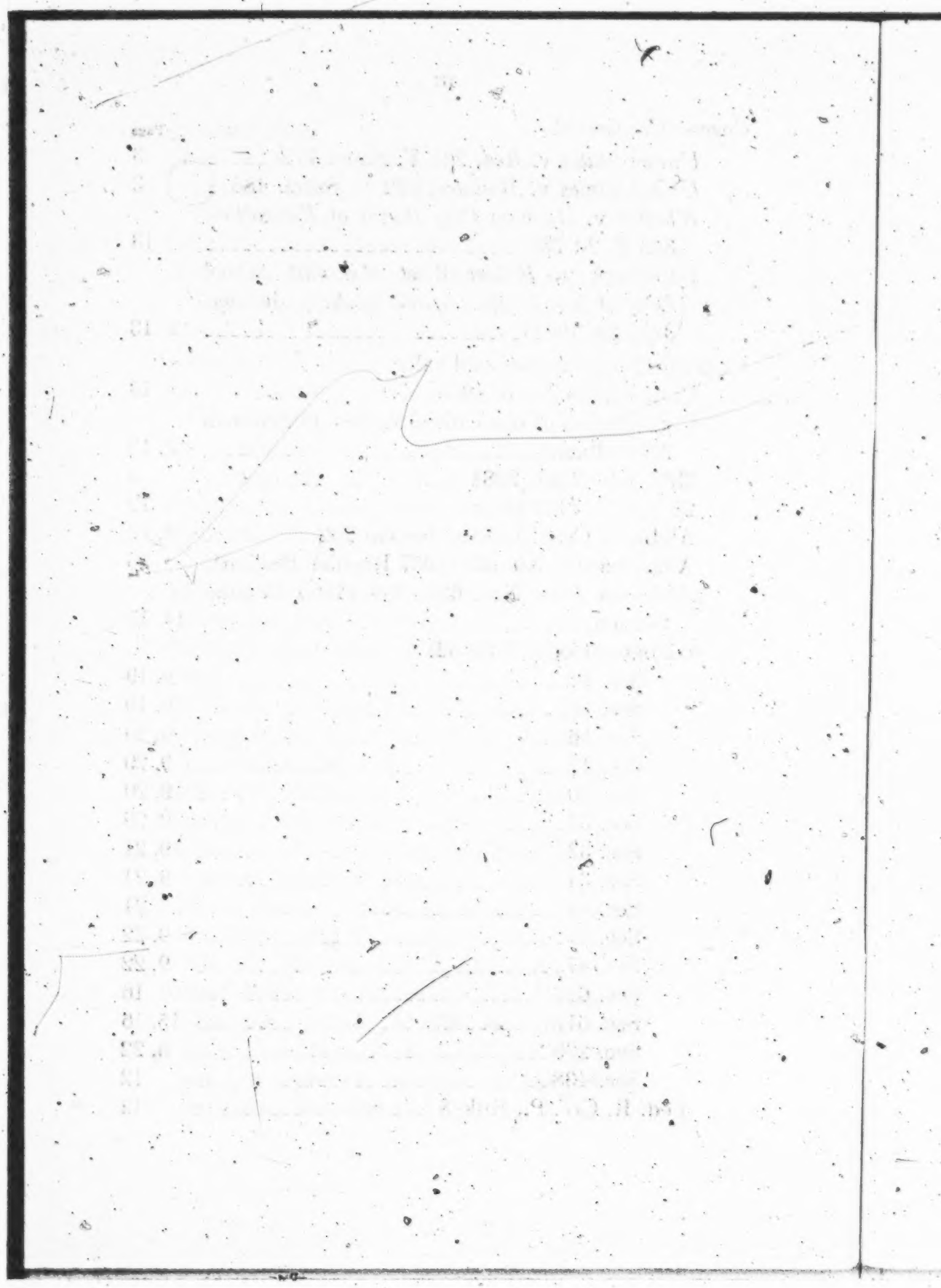

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 489

LURLEEN BURNS WALLACE ET AL., APPELLANTS

v.

ANTHONY T. LEE, ET AL., AND UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

MOTION TO AFFIRM

Pursuant to Rule 16(1)(c) of the Revised Rules of this Court, the United States moves that the judgment of the district court entered on March 22, 1967, be affirmed.

OPINIONS BELOW

The opinion of the three-judge district court supporting the decree from which this appeal is taken (J.S. A27–A67) is reported at 267 F. Supp. 458. Prior opinions in the case are reported at 231 F. Supp. 743 and at 221 F. Supp. 297.

JURISDICTION

The judgment of the three-judge district court (J.S. A1–A26) was entered on March 22, 1967. A no-

tice of appeal was filed on April 7, 1967. The time for filing the Jurisdictional Statement was extended by the district court to August 14, 1967, and it was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. § 1253.

QUESTIONS PRESENTED

1. Whether the district court was correct in granting relief against the State Superintendent of Education, the Governor and the State Board of Education, requiring them to exercise their authority to effect desegregation in public school systems throughout the State, when local school authorities were not parties to the suit.

2. Whether the district court correctly defined the constitutional obligation of the State to disestablish the dual racial school system.

3. Whether the district court correctly found the Alabama tuition grant law unconstitutional.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides in pertinent part:

> * * * nor shall any State * * * deny to any person within its jurisdiction the equal protection of the laws.

The relevant provisions of Alabama law cited in this motion are set forth in the appendix hereto.

STATEMENT

The Procedural History. This class action was originally filed on January 28, 1963, by Negro parents of school-age children of Macon County, Alabama,

against the public school officials of the county. On July 16, 1963, by order of the district court, the United States was made a party and *amicus curiae* in order that "the public interest in the administration of justice would be represented" (J.S. A29). The district court entered a preliminary injunction on August 22, 1963, observing that "it appears that the defendants are at the present time ready and willing to start immediately in the desegregation of the schools of Macon County." *Lee* v. *Macon County Board of Education*, 221 F. Supp. 297, 300 (M.D. Ala.). Yet, on three separate occasions the court found it necessary to enjoin various forms of interference by State and non-defendant local officials with the desegregation of schools in Macon County.[1] And, on February 2, 1964, the private plaintiffs filed a supplemental complaint adding as defendants the Governor, the State Board of Education, and the State Superintendent of Education, asking relief against their efforts to enforce a State-wide policy of racial school segregation in the State of Alabama and seeking to enjoin as unconstitutional a State tuition grant law. At that point, a three-judge court was constituted pursuant to 28 U.S.C. §§ 2281, 2284.

[1] See *United States* v. *Wallace*, 222 F. Supp. 485 (enjoining interference by Governor George C. Wallace and officials of the Alabama State Highway Patrol); *Lee* v. *Macon County Board of Education*, Civil Action No. 604–E, February 3, 1964, R. 25–30 (restraining, upon motion of the private plaintiffs, interference by the Governor, State Superintendent of Education, and the State Board of Education); and *United States* v. *Rea*, 231 F. Supp. 772 (enjoining interference by the Mayor of Notasulga, Alabama).

On July 13, 1964, the district court concluded that "the State of Alabama has an official policy favoring racial segregation in public education," and that "[s]trictly in accord with this official policy, the State of Alabama has operated and presently operates a dual school system based upon race." 231 F. Supp. at 750. The court found that "the evidence as herein related clearly establishes a persistent course of action by the defendant State officials to interfere with and prevent the carrying out of this Court's order respecting the desegregation of the Macon County public schools, and * * * [that] State officials have in this interference acted wilfully * * *," and observed that "there must be a recognition on the part of these State officials that in the exercise of their general control and supervision over all the public schools in the State of Alabama and particularly in the allocation and distribution of State funds for school operations, they have an affirmative duty to proceed with 'deliberate speed' in bringing about the elimination of racial discrimination in the public schools of this State." 231 F. Supp. at 753, 756. The court accordingly enjoined the defendant State officials from interfering with the elimination of racial discrimination by local school officials in Macon County or in any school district in the State of Alabama, from implementing the Alabama tuition grant law, and from (R. 494):

> Failing, in the exercise of its control and supervision over the public schools of the State, to use such control and supervision in such a manner as to promote and encourage the elimi-

nation of racial discrimination in the public schools, rather than to prevent and discourage the elimination of such discrimination.

In August 1966, the district court permitted the United States to file a supplemental complaint in intervention attacking the validity of a new Alabama tuition grant statute, and in September and November of the same year the private plaintiffs filed supplemental complaints for further State-wide desegregation relief, alleging, *inter alia*, that the Governor had continued to interfere with public school desegregation in Alabama since July 13, 1964. Following extensive discovery by all parties, the case was heard on November 30–December 2, 1966. Post-trial briefs were then submitted and oral argument heard on February 3, 1967. On March 22, 1967, the district court entered the order from which this appeal is taken, granting supplemental State-wide desegregation relief, and declaring the 1965 tuition grant statute unconstitutional. This Court denied a stay of that decision on May 22, 1967. 387 U.S. 916.

The district court's decision. The district court found that the defendant Alabama State officials, particularly the Governor and State Superintendent of Education, had continued to use their power and positions to promote public school segregation and to defeat the desegregation efforts of local school systems. There were many instances of unusually direct interference; telegrams and letters from the Governor and State Superintendent to local superintendents who had adopted desegregation plans which went "beyond the * * * minimum requirements of the law," meetings

called by the Governor, pressure on local school boards to retreat from faculty desegregation plans, and offers to provide State funds to hire additional teachers for students who would otherwise be taught by a teacher of a different race. But, according to the district court, "the most significant action by these defendant state officials, designed to maintain the dual public school system based upon race, is found in the day-to-day performance of their duties." (J.S. A40–A48.)

Thus, the State Department of Education, in conducting surveys of local school systems and making recommendations with respect to the location, construction, consolidation, capacity, physical condition, and site and building size of schools, has sought to perpetuate the dual system of white and Negro schools. So, also, the appellants have taken no steps to eliminate the segregation of teacher institutes. In-service teacher training programs and teacher certification were still being used to enforce segregation. Nor have the appellants attempted to desegregate school transportation systems or to eliminate gross inequalities between busses used for transporting white students and those used for transporting Negro students, despite extensive statutory State control over, and almost total State financial support of, the local transportation systems.[2] And, finally, trade schools and junior colleges, under the direct control of the appellants, continued to be operated on a segregated basis (J.S. A48–A59).

On the basis of these findings, the district court

[2] See Ala. Code, Title 52, § 209.

granted a permanent injunction against interference with local desegregation, and ordered the appellants to use their authority in specific ways to promote and encourage the disestablishment of the dual racial school system throughout Alabama and to notify the local school boards in the 99 school districts not already involved in school desegregation litigation that they were required to adopt a desegregation plan meeting the standards set forth in a model plan attached to the court's decree (J.S. A2–A10).

The desegregation plan (J.S. A13–A26) is based upon the "freedom of choice" method—the method most public schools in the South have used to begin desegregation of their school systems—under which school attendance assignments are determined by the choice of students and parents. It follows, in all significant respects, the model decree formulated by the Court of Appeals for the Fifth Circuit in *United States* v. *Jefferson County Board of Education*, 372 F. 2d 836, affirmed on rehearing, March 29, 1967, pending on petitions for certiorari, Nos. 256 and 301, this Term. Section I of the plan provides that all grades will be desegregated commencing with the 1967–68 school year and sets forth the mechanics governing the exercise of a choice, stating who may exercise a choice, when it is to be exercised, how students and the public are to be notified, how priorities are to be determined when the number of choices exceeds available space in a particular school, and providing for non-racial assignment of students who do not exercise a choice. Section II provides that students newly entering the school system are to have

a free choice. Section III prohibits racial discrimination in services, facilities, activities and programs of the school system, and Section IV obliges the school boards to equalize the schools traditionally maintained for Negroes. The plan also has provisions respecting school transportation (Section I), school construction and consolidation (Section V), and faculty assignments (Section VI). Finally, provision is made in Section VII of the plan—and in the decree itself (J.S. A10–A12)—for submitting reports to the State Superintendent and the district court so that the court and the parties will be able to determine how the decree is being carried out.

In addition, the district court found the 1965 Alabama tuition grant statute was an attempt to promote and finance a private, segregated school system (J.S. A59–A63) and enjoined its implementation as unconstitutional (J.S. A12–A13).

ARGUMENT

1. Appellants complain that the decree was against them alone, State-wide officials, instead of against the local school authorities whose systems are to be affected by the order. In the circumstances, that was wholly appropriate.

The court below found, upon ample evidence, that the defendant State officials have long used their position and authority to encourage and promote the system of racial discrimination and segregation on a State-wide basis. Now that they have been ordered to use their powers in the opposite direction, it ill becomes them to deny their jurisdiction. Nor is there any

doubt that, as the court below found, "the defendant officials have extensive powers over [the State] public school system" (J.S. A38).[3] At all events, the exact boundaries of that authority as a matter of State

[3] Section 262 of the Alabama Constitution provides that: "The supervision of the public schools shall be vested in a superintendent of education, whose powers, duties, and compensation shall be fixed by law." The Legislature has created the State Board of Education and has provided in section 14 of Title 52 of the Alabama Code that it "shall exercise, through the state superintendent of education and his professional assistants, general control and supervision over the public schools of the state * * *." The Legislature has further provided that "The state superintendent of education shall execute the educational policies of the state board of education" (Ala. Code, Title 52, § 45).

The State Board is expressly authorized to adopt rules and regulations governing school construction, school sanitation, and physical examination of school children, and must enforce all rules relating to "school health, compulsory education and child conservation" (Ala. Code, Title 52, § 15). It controls the grading and standardizing of public schools (Ala. Code, Title 52, § 16), the minimum contents of courses of study (Ala. Code, Title 52, § 17), and the training and certification of teachers (Ala. Code, Title 52, § 20).

The State Board is charged with the duty of "equalizing public school facilities throughout the State" and administers a fund for that purpose (Ala. Code, Title 52, § 33). The State Board and the State Superintendent together exercise a broad power of review of actions of local boards and local superintendents in "matters relating to finance, and other matters seriously affecting the educational interest" (Ala. Code, Title 52, §§ 34 and 47).

To assist it in carrying out its express powers, the Legislature has granted the State Board a general rulemaking power as follows (Ala. Code, Title 52, § 31):

> In order to meet emergencies that may arise because of any defect in the language or purpose of this title, the state board of education may make such rules and regulations as will give full force and effect to any or all of its provisions.

law does not present an appropriate issue for this Court.[4] The decree does no more than direct the defendants—who are plainly not strangers to the Alabama school systems—to employ their offices toward effectuating desegregation, as every State officer is constitutionally bound to do. See *Cooper* v. *Aaron*, 358 U.S. 1, 7; *Griffin* v. *School Board*, 377 U.S. 218, 232–233.[5]

The appellants' contention that due process of law has been denied to the local school districts and State colleges affected by the order is without merit. In an action to determine the authority or duties of government officials, it is not necessary to join as parties all

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[4] There is no merit to the appellants' contention that the Alabama Supreme Court in *Opinion of the Justices*, 276 Ala. 239, 160 So. 2d 648, determined that the appellants have no legal authority to carry out the requirements of the decree. That decision (which arose out of the crisis surrounding the desegregation of the Macon County public schools) merely denies the State Board of Education power to transfer or assign teachers or students from one public school to another—responsibilities which the decree below does not impose on the defendant State officials.

[5] The approach of the Court below is not novel. Much of the public school desegregation in the State of Delaware was accomplished by a district court order requiring the State Board of Education to promulgate regulations and adopt a plan to achieve desegregation in all public school districts in the state. *Evans* v. *Buchanan*, 152 F. Supp. 886 (D. Del.), affirmed, 256 F. 2d 688 (C.A. 3), certiorari denied, 358 U.S. 836. In its second affirmance of the Delaware statewide method of desegregation, *Evans* v. *Ennis*, 281 F. 2d 385, 391 (C.A. 3), certiorari denied, 364 U.S. 933, the court of appeals cited the Delaware statute (strikingly similar to Section 33 of Title 52 of the Alabama Code) making it the duty of the State Board of Education to maintain a "uniform, equal and effective system of public schools throughout the State."

persons or inferior governmental agencies that may be affected by such a determination. *Louisiana* v. *United States*, 380 U.S. 145, 151, n. 10; *Cherokee Nation* v. *Hitchcock*, 187 U.S. 294, 300. Since the defendant State officials in the instant case have the authority to use their powers to promote the desegregation of local school districts without the approval of such local districts, the individual school boards have no legal claim requiring their presence as parties to an action determining the obligation of the State officials to so use their authority.

Nor does the provision of the decree directing the State Superintendent to advise local school districts that they are required to adopt a desegregation plan meeting all the standards included in the court approved plan improperly litigate the rights of the local districts behind their back. No school district is or has been directly ordered by the court to adopt a desegregation plan, or to take or refrain from any action, without being joined as a party and given an opportunity to be heard. The district court's order of June 14, 1967 (J.S. A229–A238) requiring the Marion County Board of Education, and, separately, other local boards, to adopt desegregation plans and take various specified actions to accomplish desegregation, cited by appellants to support their argument, was entered only after the particular local school boards were joined as parties and afforded a hearing, with the right to present any relevant evidence, cross-examine

witnesses, and fully represent themselves.[6] This same procedure is used whenever the court orders any action by the local school boards.[7]

2. At this late date, and against the background of efforts to frustrate the promise of *Brown* detailed in the opinion below, there can be no serious challenge to the comprehensiveness of the uniform desegregation plan formulated by the court. It is long since settled that the constitutional command to end discrimination in public education is not satisfied merely by an elimination of dual attendance zones for students. What is required is a transition from a dual system based on race to a unitary, non-racial system; a requirement obliging the boards to revise completely all aspects of the dual school systems. See *Brown* v. *Board of Education,* 349 U.S. 294, 300–301; *Bradley* v. *School Board,* 382 U.S. 103, 105; *Rogers* v. *Paul,* 382 U.S. 198, 199–200; *Northcross* v. *Board of Education of City of Memphis,* 302 F. 2d 818, 823–824 (C.A. 6);

[6] The district court has jurisdiction over any of the individual systems within Alabama under Rule 8, F.R. Civ. P. Venue lies for any of these school boards under 28 U.S.C. § 1392(a) which provides: "Any civil action, not of a local nature, against defendants residing in different districts in the same State, may be brought in any of such districts."

[7] That part of the court's order requiring the elimination of dual attendance zones and faculty segregation at "any trade school, junior college, or state college administered by the Alabama State Board of Education" (J.S. A9), also challenged by appellants, by its own terms affects only institutions directly under the authority of the named defendant officials. See, *e.g.*, Ala. Code, Title 52, § 438: "The state board of education shall have the control and management of the several teachers colleges of the state, for white teachers, located at Florence, Jacksonville, Livingston, Troy, and of the Alabama State College for Negroes located at Montgomery."

Kelley v. *Altheimer, Arkansas Public School District No. 22*, 378 F. 2d 483 (C.A. 8); cf. *Baldwin* v. *Morgan*, 287 F. 2d 750, 754 (C.A. 5). The desegregation plan embodied in the decree below, to be adopted by school systems throughout the State, implements that principle.[3]

Appellants specifically challenge the court's plan insofar as it requires the desegregation of faculty and staff. Yet this provision is in keeping with the decisions of all the circuits, which, following this court's decision in *Bradley* v. *School Board*, 382 U.S. 103, and *Rogers* v. *Paul*, 382 U.S. 198, have uniformly held the school board obliged to disestablish segregated patterns of faculty assignments attributable to the racial allocation of faculty under the dual system. *Yarbrough* v. *Hulbert-West Memphis School District No. 4*, No. 18,693 (C.A. 8, decided July 26, 1967); *Clark* v. *Board of Education of Little Rock School District*, 369 F. 2d 661 (C.A. 8); *Board of Education of Oklahoma City Public Schools* v. *Dowell*, 375 F. 2d 158 (C.A. 10), affirming 244 F. Supp. 971 (W.D. Okla.), certiorari denied, 387 U.S. 931; *Green* v. *County School Board of New Kent County*, No. 10,792 (C.A. 4, decided June 12, 1967); *Wheeler* v. *Durham City Board of Education*, 363 F. 2d 738 (C.A. 4); *Monroe* v. *Board of Commissioners*,

[3] The appellants' discussion of racial balance is not on point, since nothing in the decree requires any attempt to achieve a "racial balance." Nor is the decree inconsistent with any provision of the Civil Rights Act of 1964. All of the sections of that Act cited by appellants by their own terms merely delimit the coverage of the Act or particular subdivisions thereof, and do not purport to circumscribe the duties of public officials under the Fourteenth Amendment.

Nos. 17118 and 17119 (C.A. 6, decided July 21, 196); *Singleton* v. *Jackson Municipal Separate School District*, 355 F. 2d 865 (C.A. 5). Desegregation of faculty and staff is, moreover, an essential step in the elimination of the dual school system when a "freedom of choice" plan for student assignment is in effect. For the basic requirement of such a plan is that it offer each student a completely "free" choice, uninhibited by any practice—past or present—of the board based on racial segregation. See *Stell* v. *Savannah-Chatham County Board of Education*, 333 F. 2d 55 (C.A. 5), certiorari denied *sub nom. Roberts* v. *Stell*, 379 U.S. 933; *Kier* v. *County School Board of Augusta County*, 249 F. Supp. 239, 246 (W.D. Va.). This standard cannot be met where the boards continue to maintain schools identifiable as "Negro" schools or "white" schools by the racial composition of their faculty and staff. As the district court in *Kier* said (249 F. Supp. at 246):

> It is not enough to open the previously all-white schools to Negro students who desire to go there while all-Negro schools continue to be maintained as such. Inevitably, Negro children will be encouraged to remain in "their school," built for Negroes and maintained for Negroes with all-Negro teachers and administrative personnel. See Bradley v. School Bd., *supra*, 345 F. 2d 324 (dissenting opinion). This encouragement may be subtle but it is nonetheless discriminatory. * * *

3. The court below found that the Alabama tuition grant statute (Acts Nos. 687, 688, 1965 Regular Session) was "but another attempt of the State of Ala-

bama to circumvent the principles of *Brown* by helping to promote and finance a private school system for white students not wishing to attend public schools also attended by Negroes" (J.S. A60). Although it does not, on its face, speak in racial terms, its history and application show it as a transparent device by which the State seeks through purportedly private action "to accomplish what it is constitutionally forbidden to accomplish" (J.S. A59). As such, it transgresses clearly established constitutional principles. See *Griffin* v. *School Board*, 377 U.S. 218, 231-232; *Cooper* v. *Aaron*, 358 U.S. 1, 17. See, also, *Poindexter* v. *Louisiana Financial Assistance Commission*, Civil Action No. 14683 (E.D. La. August 26, 1967, stay denied by Mr. Justice Black, September 2, 1967); *Hall* v. *St. Helena Parish School Board*, 197 F. Supp. 649, 658 (E.D. La.), affirmed *per curiam*, 368 U.S. 515.

The court below quite properly analyzed the 1965 Alabama tuition grant statute in the context of its history and purpose. See *Reitman* v. *Mulkey*, 387 U.S. 369, 373. The court started with the fact that, upon the decision of this Court in the *Brown* case, Alabama responded with the Pupil Placement Act. Section 8 of that Act authorized the parent or guardian of any child attending a school where the races were commingled to terminate the child's attendance there, and provided that "such child shall be entitled to such aid for education as may be authorized by law." Title 52, § 61(8), Code of Alabama (Recompiled 1958).* This

*This section of the Pupil Placement Act was enacted as part of the program recommended by the Special Interim Committee of the Alabama Legislature, formed in 1954 to recommend proposals for delaying or avoiding racial desegregation

section was implemented two years later by a 1957 law[9] which provided that local boards of education "may, in lieu of providing a public school or schools" pay tuition grants for children in districts where the public schools have been closed. These grants were to be paid "from available school or education funds as the board shall determine to be reasonably necessary to enable such children to attend private non-denominational schools selected by their parents or guardians." In 1963, when the district court ordered the desegregation of the Macon County public schools, an all-white private school, Macon Academy, was organized in Macon County. In January 1964, the State Board of Education ordered the closing of all grades above the seventh grade at the newly to-be-desegregated Tuskegee High School in Macon County, and in February directed the Macon County Board of Education to provide students at Macon Academy with financial assistance under the 1957 tuition grant act. By its order of July 13, 1964, the district court enjoined such assistance. Then followed the present tuition grant law.

The statute was passed as an amendment to § 61(8) of Title 52 of the Alabama Code, which provided that "no child shall be compelled to attend any school in which the races are commingled when a written objection of the parent or guardian has been filed with the board of education," and authorized tuition grants

in public schools. See *Lee* v. *Macon County Board of Education*, 231 F. Supp. 743, 749 n. 4 (M.D. Ala.).

[9] Act. No. 528, Regular Session 1957; § 61(7) of Title 52, Alabama Code (Recompiled 1958).

for such children. The 1965 amendment merely removed the racial purpose from the face of the statute and provided that "no child shall be compelled to attend any school when in the judgment of the parent or guardian of such child attendance in the school to which assigned will be detrimental to the physical or emotional health of such child or subject the child to hazards to personal safety." If, in these circumstances, a child applied for transfer to any other public school in the State, and was rejected, he would be eligible for a tuition grant. The maximum amount of any grant was to be the lesser of $185 per school year, or the same per pupil cost (determined under a formula based on average daily attendance) that would ordinarily have gone to the public school system attended by the child.

Upon passage of this Act in 1965, all-white private schools commenced operation in five Alabama counties and one in Birmingham, where federal courts had ordered the beginning of public school desegregation. As the court below found, "every dollar paid during the 1965–66 school year went to students enrolled in all-white private schools established when the public schools desegregated" (J.S. A62). Such grants were an important source of revenue for these schools.[11] The purpose of the formation of these pri-

[11] At one such school the tuition fees were $90 a year higher for children who received State tuition grants than for children who did not receive them, and tuition grants there totaled $6,475 in 1965–66, out of a total approximate annual operating expense of $20,000. At two other all-white private schools the grants ran approximately 10% of the annual costs that year. At Hoover Academy in Birmingham tuition grants constituted about one-sixth of the operating costs in 1965–66.

vate schools was made clear in a televised speech by the Governor before the legislature on July 26, 1966, when he urged private donations to "help people in our State who are being forced to conduct private schools because of the destruction of their public schools" (J.S. A63).

Upon substantial evidence, the court found that the transparent purpose and effect of this statute is to provide significant State support for a segregated school system. As such, it was properly enjoined.

CONCLUSION

For the foregoing reasons the judgment of the court below should be affirmed.

Respectfully submitted.

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SEPTEMBER 1967.

APPENDIX

The following provisions of the Alabama Constitution and of Title 52 of the Alabama Code set forth the powers of the defendant State officials of the public school system of the State of Alabama:

Alabama Constitution

Section 262. The supervision of the public schools shall be vested in a superintendent of education, whose powers, duties, and compensation shall be fixed by law.

Alabama Code, Title 52

Section 14. *General powers.*—The state board of education shall exercise, through the state superintendent of education and his professional assistants, general control and supervision over the public schools of the state, except the University, the Alabama Polytechnic Institute, and the Alabama College, and shall consult with and advise through its executive officer and his professional assistants, county boards of education, city and town boards of education, superintendents of schools, school trustees, attendance officers, principals, teachers, supervisors, and interested citizens, and shall seek in every way to direct and develop public sentiment in support of public education.

Section 15. *Rules and regulations.*—The state board of education shall adopt rules and regulations for the proper construction of school buildings, for the sanitation of schools, for the physical examination of school children, and, in conjunction with other state authorities, shall see to it that the rules relating to school health,

compulsory education, and child conservation are enforced.

Section 16. *Grading and standardizing schools.*—The state board of education shall prescribe rules and regulations for the grading and standardizing of public schools.

Section 17. *Courses of study.*—The state board of education, on the recommendation of the state superintendent of education, shall prescribe the minimum contents of courses of study for all public elementary and high schools in the state, and shall fix the maximum number of books which are compulsory in each grade of the elementary schools. In every elementary school in the state there shall be taught at least reading, spelling, handwriting, arithmetic, oral and written English, geography, history of the United States and Alabama, elementary science, hygiene and sanitation, physical training, and such other studies as may be prescribed by the state board of education. English shall be the only language employed in teaching in the first six grades of the elementary schools in the state.

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Section 20. *Teachers' training and certification.*—The state board of education, through its executive officer, shall prescribe rules and regulations, governing the training and the certification of teachers in the public schools of the state, and for the acceptance of the diplomas of the normal schools, colleges and universities of Alabama, as well as of other states, also the subjects and the standards of teachers' examinations. The state board of education with the advice of the state superintendent of education, shall have full power and authority to promulgate and adopt rules and regulations governing the issuance of professional and special certificates.

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Section 31. *Rules necessary to make effective the law's purpose.*—In order to meet emer-

geneies that may arise because of any defect in the language or purpose of this title, the state board of education may make such rules and regulations as will give full force and effect to any or all of its provisions.

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Section 33. *Equalization of school facilities, revolving fund.*—The state board of education is specifically charged with the duty of equalizing public school facilities throughout the state, insofar as it may be practicable; and in order to make it possible to increase the length of school terms in rural districts, and to care for that and other worthy purposes for which no adequate appropriation has been made, the said state board of education shall expend so much as it may deem proper of the amount set aside annually by legislative enactment as a revolving fund for the use of the state board of education, provided at least eighty percent of the amount appropriated, if used, shall be expended for lengthening of public school terms and otherwise bettering conditions in rural schools.

Section 34. *Review by state superintendent.*—The state board of education shall have the power and authority to promulgate rules and regulations governing the right and method of review, and disposition upon review, by the state superintendent of education of actions and orders of county and city boards of education and of county superintendents of education and city superintendents of schools in matters relating to finance and other matters seriously affecting educational interest.

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Section 44. *Duties.*—The state superintendent of education shall explain the true intent and meaning of the school laws, and of the rules and regulations of the state board of education. He shall decide, without expense to the parties concerned, all controversies and disputes involving the proper administration of the public school system. The state superintendent of education

shall enforce all the provisions of this title, and the rules and regulations of the state board of education. He shall file charges with the state board of education, or other controlling authority and shall recommend for removal or institute proceedings for the removal of any person appointed under the provisions of this title, for immorality, misconduct in office, insubordination, incompetency, or wilful neglect of duty.

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Section 45. *Execution of educational policy.*—The state superintendent of education shall execute the educational policy of the state board of education. He shall call and conduct conferences of county or city boards of education, county superintendents of education, city superintendents of schools, supervisors, attendance officers, principals, and teachers, on matters relating to the condition, needs and improvements of the schools.

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Section 47. *Review of action of county and city boards.*—The state superintendent of education under rules and regulations promulgated by the state board of education, shall have the authority to review actions and orders of county and city boards of education and city superintendents of schools in matters relating to finance and other matters seriously affecting the educational interest. Upon such review the state superintendent of education shall have the power to determine from the facts the just and proper disposition of the matter. The order of the state superintendent shall be binding.

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Section 209. *Purposes and plan of apportionment* [*of Minimum Program Fund*].—In addition to all other appropriations and apportionments of public school money now provided by law and made available for elementary and high schools there shall be apportioned and

paid to county boards of education from the minimum program fund the amounts to be determined as hereinafter provided and in accordance with regulations of the state board of education. This minimum program fund shall be used principally (1) to aid in providing at least a seven months' minimum term for all schools, and (2) to assist in the promotion of equalization of educational opportunity for all children in the public elementary and high schools. The following requirements and procedures, supplemented when necessary by regulations of the state board of education, shall govern the apportionment of the fund:

1. *Requirements for participating in the fund.*—In order for the public schools of a county, including the independent cities, to share in the apportionment of the minimum program fund, and to receive the maximum benefits therefrom, they shall meet the following conditions; * * * d. Beginning July 1, 1935, the county shall expend funds allotted for teachers' salaries in accordance with a salary schedule or schedules adopted by the county board of education and approved by the state superintendent of education, provided such salary allotments are at least equivalent to those allotted in the state minimum salary schedule. e. As soon as practicable after July 1, 1935, the county board of education shall submit to the state superintendent of education, the following: (1) A proposed county-wide building program which sets out in detail the location of all present and proposed buildings; which indicates proposed educational centers and grades to be taught at these centers, and which provides schools for all children of the county. (2) A proposed transportation program showing the proposed routing of busses and the condition of all roads to be used for transportation * * *.

2. *Determining the cost of the seven months or established minimum program.*—In determining the cost of the seven months minimum

program or whatever term may be established to be equalized, the state board of education shall proceed to find the following allowable costs for each county, including the independent cities: Teachers' salaries, transportation, current expenses other than teachers' salaries and transportation, and, capital outlay. a. The minimum program allowance for salaries of teachers shall not exceed salaries paid, and shall be determined as follows: The number of teacher units in each county, including the cities, shall be multiplied by the amount or amounts per teacher unit to be fixed by the state board of education, which amounts shall be based on the average salaries for each major classification required by the operation of the minimum salary schedule or schedules adopted by the state board of education. In determining the number of teacher units to be allowed, the state board of education shall from time to time cause an investigation to be made of current practices in regard to teacher load in various types of schools and in counties falling in different density of population groups. The basis for determining the teacher unit shall give due regard to types of schools, density of population and to other pertinent factors. If the number of elementary or high school teachers employed is less than the number of approved teacher units in any county as computed in accordance with the regulations of the state board of education, the state superintendent of education may in his discretion use the total number of teachers employed, or any intermediate number between such actual number and the number of units allowed, as explained above, in ascertaining the minimum program fund to be apportioned as provided hereinafter; provided such allowances shall be made in so far as possible on an objective basis to be established by regulations of the state board of education. In determining the salary schedule

or schedules which shall control the expenditure of funds allowed for teachers' salaries the state board of education shall from time to time cause an investigation to be made of the current practices in regard to salaries paid various employees engaged in instructional services of the several county and city boards of education, giving due consideration to the academic and professional preparation of employees, to the length of service rendered, and to the cost of living. Nothing herein shall be construed to restrain counties or cities from the use of higher salary schedules than the minimum salary schedule set up by the state board of education. b. The minimum program allowance for transportation shall be determined as follows for any county: The number of pupils transported on transportation routes approved under regulations of the state board of education shall be multiplied by an amount per pupil which is to be fixed by the state board of education and applied to counties within groups having similar density of population; provided, studies shall be made from time to time to determine whether the cost allowed per pupil or the cost unit should be changed in any or all counties. In determining the amount to be allotted for transportation no allowance shall be made for transporting pupils who live less than two miles from the school they are attending unless such pupils can be shown to be physically handicapped and to require transportation. The total amount allotted any county for transportation shall not exceed a figure determined by the state board of education in terms of the ratio between pupils transported to school and the total number of pupils attending school in that county or some similar ratio established by the state board of education. Any county which qualifies to have transportation included in its minimum program must provide busses which meet minimum standards established by

the state board of education, and must take such other steps to protect the safety of the children as are required under regulations of the state board of education. c. The minimum program allowance for current expense other than teachers' salaries and transportation shall be determined by allowing a uniform percentage to be fixed by the state board of education. In addition, any amount spent from county and local funds for vocational education, which has been approved under the regulations of the state board of education, shall be included in the minimum program. d. The amount allowed to each board of education for capital outlay in the minimum program shall be determined under regulations of the state board of education, based largely on the number of teacher units. All boards which participate in this allowance shall submit an annual building program and otherwise comply with the requirements of law and the regulations of the state board of education regarding capital outlay expenditures. e. The total cost of the minimum program in any county shall be the total allowed for teachers' salaries, for transportation, for current expenses other than salaries of teachers and transportation, and for capital outlay. * * *

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